

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Nooksack Branch
Nooksack, Washington 98276
(City of Nooksack, Petitioner)

Docket No. A2011-17

**SUPPLEMENTAL RESPONSE OF UNITED STATES POSTAL SERVICE TO
PETITIONER'S APPLICATION FOR SUSPENSION OF DISCONTINUANCE
FOR THE NOOKSACK BRANCH, NOOKSACK, WASHINGTON 98276
(May 27, 2011)**

On May 17, 2011, Petitioner filed an application to suspend the discontinuance of the Nooksack Branch (the "Application").¹ By means of Order No. 734 (May 19, 2011), the Postal Regulatory Commission (Commission) docketed correspondence from the City of Nooksack, Washington, assigning PRC Docket No. A2011-17 as an appeal pursuant to 39 U.S.C. § 404(d). Earlier today, the Postal Service filed its response to the Application.² The Postal Service learned recently that a suspension, and not a discontinuance, of the Nooksack Branch is scheduled for today, May 27, 2011.³ In this pleading, the Postal Service renews the position taken in its initial response to the Application, and modifies its assertions to reflect the new discovery that this matter concerns a suspension rather than a discontinuance.

Petitioner's appeal is not within the scope of the Commission's jurisdiction under 39 USC § 404(d). The Nooksack Branch is not an independent Post

¹ Application for Suspension of Closure of the Nooksack Post Office, Nooksack, Washington 98276, PRC Docket No. A2011-17 (May 17, 2011).

² Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276, PRC Docket No. A2011-17 (May 27, 2011).

³ The Nooksack Branch is being suspended due to the expiration of its lease.

Office, so Commission jurisdiction under 39 U.S.C. § 404(d) does not attach. As the Commission is well aware, the Postal Service understands that the Commission lacks subject matter jurisdiction under 39 U.S.C. § 404(d) to review Postal Service decisions regarding the discontinuance or suspension of stations and branches. *See generally* Reply Brief of the United States Postal Service, section III (pp. 6-12), PRC Docket No. N2009-1 (December 16, 2009); Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. A2010-3 (April 19, 2010).⁴ In the Postal Service's view, the Post Office discontinuance regulations in 39 C.F.R. Part 241.3 and Handbook PO-101 do not apply to the Nooksack Branch because the Nooksack Branch is not an independent Post Office, and it has not been the subject of a discontinuance. Similarly, the Commission's Rules of Practice for Post Office closings found in section 3001.110 et seq. do not apply to a subordinate unit of a Post Office, or to a suspension, which is not a final decision regarding the status of a postal facility. Petitioner fails to allege facts that constitute a condition precedent to any jurisdiction of the Commission under section 404. 39 U.S.C. § 404(d)(5).

Even assuming section 404(d) was interpreted to embrace the discontinuance of stations and branches, this section does not extend to suspensions. *See* 39 U.S.C. § 404(d). Section 404(d) provides that an appeal under that section must concern a "closing," and not merely a suspension, of a "Post Office," and not a subordinate unit of a Post Office. Accordingly, the relief requested by the Petitioner is not, as a matter of law, available to Petitioner and

⁴ In turn, the Postal Service is well aware that the Commission claims a broader jurisdiction.

should be denied. The Postal Service intends to respond to these matters in greater detail in a motion to dismiss.

For the reasons set forth above, Petitioner's application for suspension of the scheduled suspension of the Nooksack Branch should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Anthony F. Alverno
Chief Counsel, Global Business

Kenneth N. Hollies
James M. Mecone

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-6525; Fax -5628
May 27, 2011